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SENSITIVE FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

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FIRST GENERAL COUNSEL'S REPORT

MUR: 6658
DATE COMPLAINT FILED: October 9, 2012
DATE ACTIVATED: May 7, 2013

EXPIRATION OF SOL: September 20, 2017¹

ELECTION CYCLE: 2012

COMPLAINANT: Maria Elena Farrell

RESPONDENTS: Unknown

RELEVANT STATUTES AND REGULATIONS:
2 U.S.C. § 431(17)
2 U.S.C. § 434(b)(4)(H)(iii)
2 U.S.C. § 434(c)
2 U.S.C. § 434(g)
2 U.S.C. § 441d
11 C.F.R. § 100.22(a)
11 C.F.R. § 100.26
11 C.F.R. § 109.10
11 C.F.R. § 109.11
11 C.F.R. § 110.11

INTERNAL REPORTS CHECKED: Disclosure Reports

OTHER AGENCIES CHECKED: None

I. INTRODUCTION

The Complaint alleges that unknown respondents paid for and distributed yard signs expressly advocating the defeat of presidential candidate Barack Obama without disclaimers. Although the available information identifies a vendor that sold these yard signs, we do not know who paid for the signs described in the Complaint. Accordingly, we recommend that the

¹ This date is based on when Complainant first informed the Commission of the sign by e-mail.

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1 Commission find reason to believe that unknown respondents violated the Federal Election
2 Campaign Act of 1971, as amended (the "Act"), by failing to include a disclaimer on the signs
3 and failing to report independent expenditures. *See* 2 U.S.C. §§ 434(b)(4)(H)(iii), (c)(1), (g),
4 441d(a); 11 C.F.R. §§ 109.10, 110.11. We also recommend that the Commission authorize
5 compulsory process to determine who paid for the signs.

6 **II. FACTS**

7 The Complaint included a photo of a yard sign with the phrase, "STOP the WAR on
8 COAL – FIRE OBAMA," and states that identical signs were located in various municipalities
9 in Mercer County, Pennsylvania — particularly on Route 62 in Jackson Township and the
10 boroughs of Jackson Center and Stoneboro. Compl. at 1, Attach. (Oct. 9, 2012). Complainant
11 also states that she sent a photo and e-mail of the sign to the Commission on September 20,
12 2012, prior to filing the Complaint. *Id.* The Complaint alleges that the signs were required to
13 have a disclaimer because they expressly advocate the defeat of President Barack Obama, a
14 candidate for re-election in 2012. *Id.* Finally, Complainant states that she could not identify the
15 person, committee, or group responsible for the signs because of the missing disclaimer. *Id.*

16 The available information shows that the signs were distributed as early as May 2012.
17 *See* Zeke Miller, *Coal Miners Protest Biden In Ohio*, BUZZFEED.COM (May 17, 2012),
18 <http://www.buzzfeed.com/zekejmilller/coal-miners-protest-biden-in-ohio>. According to a local
19 news article, Gary Dubois claims to have distributed 16,300 of the signs, and the article includes
20 a picture of Dubois holding one of the signs. Andrew Maykuth, *Pa. coal region backing off its*
21 *Democratic bent*, PHILLY.COM (Oct. 28, 2012), [http://articles.philly.com/2012-10-](http://articles.philly.com/2012-10-18/business/34778960_1_coal-region-coal-industry-umwa)
22 [18/business/34778960_1_coal-region-coal-industry-umwa](http://articles.philly.com/2012-10-18/business/34778960_1_coal-region-coal-industry-umwa). The Commission, however, has

1 information suggesting that Dubois may have been a vendor who sold this type of sign, and was
2 not the person who paid for the signs himself.²

3 III. LEGAL ANALYSIS

4 A. Failure to Include Proper Disclaimer

5 The Act and Commission's regulations require a disclaimer whenever any person makes
6 a disbursement for the purpose of financing "public communications" that "expressly advocate"
7 the election or defeat of a clearly identified federal candidate. 2 U.S.C. § 441d(a); 11 C.F.R.
8 § 110.11(a)(2). If the communication is not authorized by a candidate or an authorized
9 committee, the disclaimer must clearly state the name and permanent street address, telephone
10 number, or World Wide Web address of the person who paid for the communication and state
11 that the communication was not authorized by any candidate or candidate's committee.
12 2 U.S.C. § 441d(a)(3); 11 C.F.R. § 110.11(b)(3);³ *see also* 11 C.F.R. § 109.11 (requiring "non-
13 authorization" disclaimer for independent expenditures).

14 The signs identified by the Complaint qualify as public communications. A public
15 communication includes "outdoor advertising facility" and "any other form of general public
16 political advertising." 11 C.F.R. § 100.26. Signs, including yard signs, are encompassed within
17 the phrase, "any other form of general public political advertising," although they are not
18 specifically enumerated in the definitions of public communication in 2 U.S.C. § 431(22) and

² In MUR 6659 (Murray Energy Corporation), respondent Murray Energy Corporation admitted that it paid Dubois \$3,600 in July 2012 for 600 signs, and provided a copy of a corresponding invoice and check. *See* First Gen. Counsel's Rpt. at 3 n.3, MUR 6659 (Murray Energy Corporation) ("First GCR") (on circulation to the Commission). Murray Energy also admitted that it distributed an additional 4,108 signs it bought from another vendor, but it asserts that it was not the only one that purchased or distributed the signs. *Id.* at 3 n.3, 4. In MUR 6659, we are recommending that the Commission find reason to believe and enter into pre-probable cause conciliation with Murray Energy. *Id.* at 11-12.

³ The disclaimer notice on printed materials must appear within a printed box set apart from the other contents in the communication, and the print must have a reasonable degree of color contrast between the background and the printed statement and be of a sufficient type-size to be clearly readable by the recipient of the communication. 2 U.S.C. § 441d(c); 11 C.F.R. § 110.11(c)(2).

1 11 C.F.R. § 100.26. *See* Factual and Legal Analysis at 3, MUR 6546 (Michael J. Fox)
2 (dismissal of low rated-rated matter involving large sign on commercial property); 11 C.F.R.
3 § 110.11(c)(2)(i) (specific reference to “signs” in a provision setting out requirements for
4 disclaimers on printed communications).

5 The signs identified by the Complaint contain express advocacy. A communication
6 contains express advocacy when, among other things, it uses phrases such as “vote against Old
7 Hickory,” “reject the incumbent,” or uses campaign slogans or individual words that in context
8 can have no other reasonable meaning than to urge the defeat of a clearly identified federal
9 candidate. 11 C.F.R. § 100.22(a). The phrase “FIRE OBAMA” constitutes express advocacy
10 because it refers to President Barack Obama, who was a candidate for re-election, and is an
11 exhortation to vote against him and defeat his candidacy. *See* Factual and Legal Analysis at 3,
12 MUR 6642 (Unknown Respondents) (phrase “FIRE KLOBUCHAR” expressly advocated the
13 defeat of Senator Klobuchar).

14 The “STOP the WAR on COAL – FIRE OBAMA” signs contain express advocacy and
15 are public communications. Therefore, provided that no candidate authorized or paid for the
16 signs, the person who paid for and disseminated the signs should have included a disclaimer
17 identifying who paid for the signs, and the person’s address, telephone number, or World Wide
18 Web address.

19 The Commission has previously authorized investigations of allegations that unknown
20 respondents failed to include disclaimers and file independent expenditure reports in connection
21 with billboards expressly advocating the defeat of a federal candidate. *See* MUR 6642

1 (Unknown Respondents); MURs 6486/6491 (Hicks).⁴ Here, as in those matters, we do not have
2 any information as to the identity of the persons responsible for the communication or the costs
3 of the communication. Similarly, as in those matters, determining the identity of the
4 responsible persons should not be difficult because we have identified a vendor of the signs.

5 It is likely that the signs at issue here cost more than a *de minimis* amount. Available
6 information shows that each yard sign costs approximately \$6, *see* First GCR at 3 n.3, MUR
7 6659 (respondent admitted paying \$3,600 for 600 of the same signs), and the Complaint alleges
8 that numerous signs were distributed in "many" locations in Western Pennsylvania. Compl. at
9 1. Furthermore, there is no information indicating that the unknown respondents here took any
10 timely action to correct their violations of the Act. As a result, this matter is distinguishable
11 from instances where the Commission has decided to not pursue enforcement in express
12 advocacy disclaimer cases because the apparent cost of the communications generated a civil
13 penalty below \$1,000, or because the respondents took prompt corrective action.⁵

14 Accordingly, we recommend that the Commission find reason to believe that unknown
15 respondents violated 2 U.S.C. § 441d(a) and 11 C.F.R. § 110.11.

16 **B. Failure to Report Independent Expenditure**

17 Under the Act and Commission regulations, unauthorized political committees, as well
18 as other persons, must file reports disclosing their independent expenditures. *See* 2 U.S.C.
19 § 434(b)(4)(H)(iii) (requiring non-connected political committees to report independent

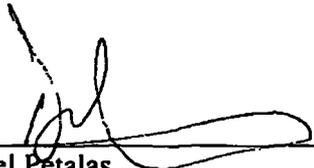
⁴ In the Hicks matters, the Commission voted to take no further action when the investigation revealed that the person who paid for the billboards had never before sponsored a public communication, had no knowledge of campaign finance law, and stated that she had not coordinated her activities with any political party or candidate. *See* Second Gen. Counsel's Rpt. at 2, MURs 6486 and 6491 (Hicks).

⁵ *See* MUR 6404 (Stutzman) (dismissing allegation as to billboard and finding no reason to believe as to three road signs estimated to cost less than \$2,000); MUR 6378 (Conservatives for Congress) (EPS) (dismissing and sending reminder letter where billboard owner took partial remedial measures); MUR 6118 (Roggio) (EPS) (dismissing and sending caution letter where respondents took timely corrective action).

1 **IV. RECOMMENDATIONS**

- 2 1. Find reason to believe that Unknown Respondents violated 2 U.S.C. § 441d(a) and
3 11 C.F.R. § 110.11;
4
5 2. Find reason to believe that Unknown Respondents violated 2 U.S.C.
6 § 434(b)(4)(H)(iii), or (c)(1) and (g), and 11 C.F.R. § 109.10;
7
8 3. Approve the attached Factual and Legal Analysis;⁶
9
10 4. Authorize compulsory process; and
11
12 5. Approve the appropriate letters.

13
14
15
16 8/5/13
17 Date


18 Daniel Petalas
19 Associate General Counsel
20 for Enforcement


21 Mark Shonkwiler
22 Assistant General Counsel


23 Kamau Philbert
24 Attorney
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⁶ The Factual and Legal Analysis will be sent to the party responsible for the signs once we identify them through the investigation.